UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRAGRANCENET.COM, INC., Plaintiff, -v- FRAGRANCEX.COM, INC. and JOHN DOES 1-20, Defendants.	CV 06 2225 (JFB) (AKT) **AMENDED ANSWER TO SECOND AMENDED COMPLAINT**

Defendant FragranceX.com Inc., by its attorneys Moses & Singer LLP, answers the Second Amended Complaint herein as follows:

1. Denies the allegations in Paragraph 1 of the Second Amended Complaint.

2. Denies the allegations in Paragraph 2 of the Second Amended Complaint.

3. Admits the allegations in Paragraph 3 of the Second Amended Complaint, except admits that plaintiff seeks the relief described.

4. Admits the allegations in Paragraph 4 of the Second Amended Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 5 of the Second Amended Complaint.

6. Admits the allegations of Paragraph 6 of the Second Amended Complaint.

7. Denies the allegations of Paragraph 7 of the Second Amended Complaint.

8. Admits the allegations in Paragraph 8 of the Second Amended Complaint.

9. Admits the allegations in Paragraph 9 of the Second Amended Complaint, except denies that any tortious conduct or injury occurred.

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10. Admits the allegations in Paragraph 10 of the Second Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 11 of the Second Amended Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 12 of the Second Amended Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 13 of the Second Amended Complaint, except denies that the photographs that are the subject of this action are original or copyrightable.

14. Denies the allegations of Paragraph 14 of the Second Amended Complaint.

15. Denies the allegations of Paragraph 15 of the Second Amended Complaint, except admits that plaintiff obtained the copyright registrations attached as Exhibit A.

16. Denies the allegations of Paragraph 16 of the Second Amended Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the first and third sentences of Paragraph 17 of the Second Amended Complaint. Denies knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 17 of the Second Amended Complaint, except admits that the lower half of each page of Exhibit B appears to be a screen shot of a page of Defendant's website. Admits the fourth sentence of paragraph 17 of the Second Amended Complaint.

18. Denies the allegations of Paragraph 18 of the Second Amended Complaint, except admits that plaintiff asserted that it had rights in unspecified photographs and demanded that defendant stop using the unspecified photographs.

19. Denies the allegations of Paragraph 19 of the Second Amended Complaint, except admits that defendant made the communication alleged.

20. Denies the allegations of Paragraph 20 of the Second Amended Complaint, except admits that plaintiff commenced this action.

21. Denies the allegations of Paragraph 21 of the Second Amended Complaint.

22. Defendant repeats and realleges the allegations contained in paragraphs 1-21 above as if fully set forth herein.

23. Denies the allegations of Paragraph 23 of the Second Amended Complaint.

24. Denies the allegations of Paragraph 24 of the Second Amended Complaint.

25. Denies the allegations of Paragraph 25 of the Second Amended Complaint.

26. Denies the allegations of Paragraph 26 of the Second Amended Complaint.

27. Denies the allegations of Paragraph 27 of the Second Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

28. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

29. The photographs upon which this action consist entirely of pictures of copyrighted works in which the copyright is owned by parties other than plaintiff.

30. Plaintiff does not have the consent of the owners of copyright in the works pictured in plaintiff's photographs to make, distribute or display photographs of those works.

31. By reason of the foregoing, plaintiff has no copyright in the photographs that are the subject of this action.

THIRD AFFIRMATIVE DEFENSE

32. Upon plaintiff's identifying photographs in which it claimed copyright, defendant FragranceX.com Inc. promptly removed from its website photographs claimed by plaintiff to infringe copyright in plaintiff's identified photographs.

33. Plaintiff refused to advise defendant FragranceX.com Inc. of all of the photographs that plaintiff claimed defendant infringed in communications preceding the commencement of this action, despite defendant's request therefor.

34. By reason of the foregoing, plaintiff failed to mitigate its alleged damages.

FOURTH AFFIRMATIVE DEFENSE

35. By reason of the facts set forth in the Third Affirmative Defense, plaintiff has unclean hands in claiming and seeking to enforce copyright in the photographs that are the subject of this action.

FIFTH AFFIRMATIVE DEFENSE

36. By reason of the facts set forth in the Third Affirmative Defense, plaintiff is estopped from claiming and seeking to enforce copyright in the photographs that are the subject of this action.

SIXTH AFFIRMATIVE DEFENSE

37. By reason of the facts set forth in the Third Affirmative Defense, plaintiff waived the right to claim and enforce copyright in the photographs that are the subject of this action.

WHEREFORE, defendant FragranceX.com Inc. demands judgment dismissing the Second Amended Complaint, for its costs and disbursements in this action including counsel fees, and for such other relief as may be just.

Dated: September 19, 2006
New York, New York

MOSES & SINGER LLP

By: [signature]
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Attorneys for Defendant FragranceX.com Inc.

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Attorneys for Plaintiff

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EASTERN DISTRICT OF NEW YORK

FRAGRANCENET.COM, INC., Plaintiff, -v- FRAGRANCEX.COM, INC. and JOHN DOES 1-20, Defendants.	:	CV 06 2225 (JFB) (AKT) **AFFIDAVIT OF SERVICE**

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Joanne Taveras, being duly sworn, deposes and says:

I am not a party to this action, am over the age of eighteen, and reside in the State of New York.

On September 19, 2006, I served the attached AMENDED ANSWER TO SECOND AMENDED COMPLAINT by transmitting the papers by electronic means to the telephone numbers listed below, which numbers was designated by attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery to the attorneys at the address set forth after the name:

Robert L. Sherman, Esq. (Facsimile No. 212-318-6847)
Catherine M. Clayton, Esq. (Facsimile No. 212-230-7781)
Paul, Hastings, Janofsky & Walker LLP
75 E. 55th Street
New York, New York 10022

Joanne Taveras

Sworn to before me
September 19, 2006

Notary Public

NANCI A. EISNER
NOTARY PUBLIC, State of New York
No. 01EI5076999
Qualified in New York County
Commission Expires April 28, 2007

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